SELECT JOINT COMMISSION ON MEDICAID OVERSIGHT

Legislative Services Agency
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MEETING MINUTES[1]

Meeting Date:	**September 7, 2005**
Meeting Time:	**1:00 P.M.**
Meeting Place:	**State House, 200 W. Washington St., Senate Chambers**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**2**

Members Present: **Sen. Patricia Miller, Chairperson; Sen. Robert Meeks; Sen. Gary Dillon; Sen. Rose Antich-Carr; Sen. Billie Breaux; Sen. Vi Simpson; Rep. Timothy Brown; Rep. Mary Kay Budak; Rep. David Frizzell; Rep. Charlie Brown; Rep. William Crawford.**

Members Absent: **Rep. Peggy Welch.**

Senator Miller, Chairperson, called the meeting to order at 1:08 p.m. After discussion, Sen. Miller stated that there would be two more meetings of the Commission: September 28th at 1:00 p.m. and October 19th at 1:00 p.m.

EDS Update

Dennis Vaughan, EDS, stated that the quarterly report submitted to the Commission at the last meeting has not changed. Mr. Vaughan clarified a couple of issues discussed at the last meeting. Half of the Medicaid claims that were reflected in the

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[1] Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.ai.org/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

report as being denied or held by EDS were because the claim was either missing information from the provider or because EDS was waiting for a third party payment determination. Also, it is optional to use WebMD in submitting electronic Medicaid claims for the Medicaid fee for service program. Depending on the contract between the managed care provider and the health care provider, a provider may be required to use a clearinghouse like WebMD in submitting electronic claims for the risk based managed care program. The clearinghouse assists in complying with the Federal HIPAA law requirement of standardized claim format. A clearinghouse is also convenient for a provider because the clearinghouse distributes the claims to the numerous insurance companies. In response to a question concerning whether Medicaid patients change managed care organizations frequently, Jeanne Labrecque, OMPP, stated that the average stay by an enrollee in a specific managed care organization is nine months.

EDS is working with OMPP to determine the number of enrollees and providers by type of practice on a county basis. This information will be submitted to the Commission soon.

Hurricane Katrina Update

Secretary Mitch Roob, FSSA, gave the Commission an update on how the state is assisting in the hurricane aftermath. FSSA has sent 13 mental health professionals to Mississippi to help hurricane victims. Indiana is the only state that has deployed mental health professionals to the hurricane sites. FSSA is partnering with faith-based organizations and not-for-profit organizations in helping individuals displaced as a result of the hurricane. Seventy-five to 100 individuals are being temporarily housed at the state fairgrounds. FSSA and HUD are working together to find permanent housing for these individuals. FSSA is using a computer code to keep track of the assistance being provided in order to receive reimbursement from the federal government. Indiana has submitted the paperwork to get the additional federal assistance. In the long term, transportation and employment are going to be concerns for these individuals. In response to a question from the Commission, Secretary Roob stated that they are trying to find more permanent residences for the individuals within one week of their arrival at the fairgrounds. People should contact the Salvation Army or the Red Cross to help with housing these individuals.

Disease Management

Senator Miller informed the Commission that the disease management presentation has been moved to the next Commission meeting. Representative Crawford distributed two articles on disease management concerning the Texas program and saving Medicaid money through better diabetes care. See Exhibit 1.

Medicaid Waivers

Ms. Labrecque stated that a couple of changes have been made to the state's Medicaid waivers. FSSA is requiring developmentally disabled individuals to have at least one housemate beginning November 1. Billing will also now be on an annual basis. These two changes will result in saving enough money to open 500 Support Services (SS) Medicaid waiver slots. The money is being used for the SS Waiver because more individuals can be treated for less money under this waiver. The advocates have supported using the money for the SS waiver.

FSSA is also applying for four waivers that were required by legislation passed during the last legislative session. The waiver application process is expensive and time consuming. FSSA does not have enough employees to carry out this process and has missed a September 1 deadline.

Secretary Roob stated that some of the Medicaid waivers are close to not being cost neutral, which is a federal requirement. The state may lose these waivers if the problem is not fixed.

Medicare Part D

Clawback Issue

Ms. Labrecque explained that clawback is the payment that the state will have to make every month to the federal government for fully dual eligible Medicaid individuals. The state has been negotiating with the federal government in determining the number of the state's fully dual eligible individuals. The federal government recently informed FSSA that Indiana will be considered to have 97,000 fully dual eligible individuals and that the state will have to pay $97.58 per month per individual. This will amount to an annual payment to the federal government of $113,000,585. If the state were to instead continue to pay for these individuals' prescription drugs, it would have cost approximately $102 million, resulting in approximately a $10 million gap. FSSA will also lose $5 million in prescription drug rebates due to the decrease in prescription purchasing for these individuals. Massachusetts is the only state that has acknowledged that it will benefit from the clawback payment. The Commission asked that these numbers be given to the Commission in writing.

Sign up for the Medicare Part D benefit

The federal government recently informed FSSA that there will be 28 Medicare Part D plans for Indiana's region (which includes Kentucky). There are 11 plans that are considered local-- plans servicing only Indiana. Sign up for the program will begin October 1, 2005. FSSA continues its outreach program by contacting dual eligibles, caregivers, and providers. The Commission expressed concern for individuals having to choose between so many plans. The Commission also discussed the one percent penalty per month applied to the individual's premium for those individuals who are eligible for Medicare Part D, do not have any other prescription drug coverage, and do not sign up for the program. If a person waits two years, there will be a 24% penalty on the individual's premium per month for the rest of the coverage.

Rulemaking

Pharmacy Reimbursement

The Commission received a copy of the proposed rule changing the Medicaid pharmacy reimbursement rate. See Exhibit 2. There was no change in the dispensing fee. Reimbursement was changed from average wholesale price (AWP) minus 13 ½% to AWP minus 19%. The Commission expressed concern that smaller pharmacies would not be able to stay in business with the implementation of this proposed rule and that some providers may stop participating in the Medicaid program. This rule is projected to result in $10.6 million in state savings. Commission members also expressed concern that the pharmacists were being unfairly singled out to shoulder the Medicaid budget problems. Secretary Roob stated that if this rule results in an access problem, FSSA will address the problem.

Mr. Grant Monahan, representing the Indiana Retail Council, stated that the pharmacy reimbursement rates were cut five years ago and have never been increased. The proposed rule will have a significant impact on the industry. Mr. Monahan expressed concern that FSSA is not addressing the sources of increases in drug costs, which are at the manufacturing and production side. Commission members stated that it is important to address the issue of what AWP actually is in order to better address reimbursement. Mr. Monahan further testified that in calculating the reimbursement rate, FSSA assumes that every recipient is paying the copayment required. However, this is not the case and the pharmacy has no recourse in collecting the copayment since the pharmacy may not deny filling the prescription on this basis.

Long term care reimbursement

The Commission was provided with FSSA's proposed rule concerning freezing nursing facility reimbursement rates. FSSA stated that long term care assessment payments began in June. When asked why FSSA had not yet amended rules concerning the nursing facility reimbursement methodology, Secretary Roob stated that he did not think that a rule was needed in order to make the payments. The state has so far received $10 million in state dollars from the assessment. FSSA is projecting a biennial receipt of $66 million in state dollars. The Commission discussed possibly extending the assessment for another year or longer. When asked whether the freeze on nursing facility rates included the assessment payments, Secretary Roob stated that the assessment payments would still occur and are not part of the freeze. When asked whether nursing facilities would still receive reimbursement changes if a patient's acuity of care fluctuates, Secretary Roob stated that the proposed rule does not freeze changes in reimbursement due to a change in the patient's acuity of care.

Jim Leich, representing the Indiana Association of Homes & Services for the Aging, stated that he was surprised by the proposed rule. Long term care expenditures increase by five percent annually and these expenditures are static due to the reduction in utilization. By freezing the rates along with decreasing utilization, the costs are increasing for long term care facilities. The freeze will also result in less money being collected under the assessment fee, resulting in the state's share decreasing as well.

Vince McGowen, representing Hoosier Owners and Providers for the Elderly, stated that he hopes to talk with FSSA to discuss the details and make clarifications on the proposed rule. Mr. McGowen commented that his fear is that the freeze may discourage nursing facility providers from spending the assessment money on improvements on the facilities. Mr. McGowen further stated that the assessment process has been very efficient.

Faith Laird, representing the Indiana Health Care Association, expressed her concerns with the proposed rule and stated that she would like some clarifications on the proposed rule. Ms. Laird agreed that the freeze may discourage providers from upgrading facilities.

<u>Medicaid Buy-In Program</u>

Ms. Labrecque stated that FSSA recently filed the 2004 annual report with the federal Centers for Medicare and Medicaid Services (CMS). This program is also referred to as the MedWorks program. Since its inception in 2002, the Medicaid Buy-In Program has assisted 11,457 individuals. There were 5,899 people enrolled in the program during the fourth quarter of 2004: 4509 of the individuals also had Medicare, 525 had other insurance coverage, and 1606 had only Medicaid coverage. 1640 individuals had a gross income of at least 150% of the federal poverty level and paid an average premium of $74. $6.7 million was earned by the individuals enrolled in the program in the fourth quarter of 2004. There has been a 16.5% increase in enrollment from 2003 to 2004. Two full time employees staff this program.

<u>Sheltering of assets/lien recovery</u>

Recent legislation that passed will allow FSSA to recover Medicaid expenses from the estate of a deceased Medicaid recipient's community spouse. There has been some confusion on this, but FSSA will not be recovering from a community spouse who is still alive. In response to a question concerning whether there is anything else the legislature could do to prevent sheltering of assets, Ms. Labrecque stated that fostering the purchase of long term care insurance would help and that it is difficult to identify a person's assets at the time of eligibility and at the time of recovery. Ms. Labrecque stated that a larger pool of participants in long term care insurance would assist in lowering the premiums.

Bill Draft Requests

The Commission discussed approving legislation that would renew the long term care assessment fee another year or possibly for longer. The Commission also decided to consider a draft requiring FSSA to apply for the Cash and Carry Medicaid waiver. FSSA was asked to bring any legislative bill draft requests FSSA would like the Commission to consider to the next meeting.

The meeting was adjourned at 3:28 p.m.